

Bruce I. Afran
Attorney-at-Law
10 Braeburn Drive
Princeton, New Jersey 08540
609-924-2075

Office of General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: MUR 5475

Dear Sir or Madam.

I am counsel for Nader for President 2004 and Carl Mayer, Treasurer and Theresa Amato, Campaign Manager in connection with the aforesaid complaints

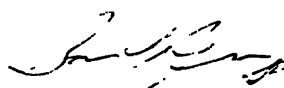
I have enclosed the campaign's response to these complaints, which as set forth herein, are without support, are grossly inaccurate and are based entirely on newspaper reports without any apparent investigation by the complainant

In addition to the response prepared by counsel, I have enclosed the following:

Letter of Ralph Nader
Affidavit of Alexandra Arace
Affidavit of Matthew Bradley
Affidavit of Taylor Hillenmeyer
FEC Designation of Counsel

Please feel free to contact me at any time for further information or material concerning these matters

Very truly yours,



Bruce I. Afran

RECEIVED
FEDERAL
ELECTION
COMMISSION
OFFICE
JUL 30 A 9:38

25044121412

Re: **MUR 5475: Complaint 1 dated July 2, 2004**

The complaint refers to a convention held by the Nader campaign in Oregon on June 26, 2004. Oregon law permits ballot access if 1,000 (one thousand) registered voters meet on the same day at the same location to nominate a candidate. The Nader campaign convened such a convention on June 26, 2004 with the goal of obtaining 1,000 signatures from Oregon voters in support of Ralph Nader's candidacy.

The Nader campaign has learned that both major parties attempted to interfere with this convention. Democrats attempted to fill seats at the convention with Kerry supporters who refused to fill out ballots; their goal was to fill the room with non-voters to prevent the Nader campaign from obtaining the minimum of 1,000 signatures required to get on the ballot. Nearly 150 people taking seats at the convention refused to complete ballots, thereby limiting the vote total to 1,004, just four votes above the minimum threshold to nominate a candidate. This occurred because of the apparent efforts of democrats to pack the convention with non-voters.

Similarly, the campaign learned from news reports 24 hours before the convention that republicans were seeking to bring voters to the convention; the complainant suggests that republican-affiliated groups used their resources to help turn out voters to the Nader campaign's Oregon convention.

Ralph Nader has made it repeatedly clear that he does not want help from anyone in the two major parties and that he is campaigning against the abuse and distortion in the political system caused by the dominance of both the democratic and republican parties. Any efforts made by republican-affiliated groups in Oregon are without any support, acknowledgement, interest or coordination of the Nader campaign, which did not even hear of these efforts until approximately 24 hours before the convention from news reports in the Oregon media. As to the claim that republican-affiliated groups have used their resources to make phone calls to bring voters to the Nader convention, the Nader campaign had no involvement with such activity, either direct or indirect.

Consistent with these facts, the complaint makes no assertion that the Nader campaign had involvement with these groups or in any manner coordinated or participated in such activity.

In fact, the sole reference to the Nader campaign in the complaint appears in paragraph 17, which states,

"If Nader for President 2004 was aware that the telephone calls were being made on its behalf, the campaign improperly accepted an in-kind corporate contribution." [emphasis added].

Not only is there no allegation in the complaint that the Nader campaign coordinated or participated in these republican-affiliated acts, the complaint does not even say that the

25044121413

Nader campaign was aware of these acts, but raises only the possibility that "if" it was "aware" it somehow "accepted an in-kind corporate contribution". Id.

But even this limited accusation cannot and should not give rise to any action by the Commission.

Under the Commission's rules, an in-kind contribution is deemed "coordinated with a candidate [or] an authorized political committee...", 11 C.F.R. 109.21, if it meets one of the "conduct" prohibitions in 11 C.F.R. 109.21(d). These "conduct" prohibitions consist of a communication that is:

created , produced or distributed "at the request or suggestion of a candidate" or where the candidate "assents" to such communication (109.21(d)(1)(i) and (ii); or

where the candidate or his committee "is materially involved in" the communication or its dissemination (109.21(d)(2); or

where the candidate or committee has "substantial discussions" with the person paying for the communication. (109.21(d)(3).

Thus, section 109.21(d) requires affirmative, material or substantive conduct by the campaign with respect to a communication before an independent group's activity can be deemed an in-kind contribution. Nowhere does the complaint describe any such conduct by the Nader campaign. The complainant's suggestion that the Nader campaign may have been "aware" of efforts by republican-affiliated groups to bring voters to the Nader convention, see Complaint at para. 17, does not satisfy the "conduct" requirement of 11 C.F.R. 109.21(d).

Indeed, a campaign is likely to be "aware" of nearly all public political acts in a media-conscious society. But mere "awareness" of such acts does not give rise to the acceptance of an in-kind contribution in the absence of "conduct" by a campaign pursuant to section 109.21(d), none of which occurred and none of which is alleged by the complainant. If mere "awareness" was to be the standard by which acceptance of in-kind contributions is to be determined, virtually no presidential campaign could avoid accepting improper contributions since nearly all independent efforts eventually come to public notice.

Since the complaint makes no assertion or claim that the Nader campaign engaged in any proscribed "conduct" under 11 C.F.R. 109.21(d), there is no basis to the allegations as to Nader for President 2004 or any officers thereof. The Commission should take no action on the complaint against the Nader campaign.

25044121414